ICLG

The International Comparative Legal Guide to:

Product Liability 2019

17th edition

A practical cross-border insight into product liability work

Published by Global Legal Group, with contributions from:

Advokatfirmaet Ræder AS
Allen & Gledhill LLP
Arnold & Porter
AZB & Partners
Bae, Kim & Lee LLC
Bahas, Gramatidis & Partners
Blake, Cassels & Graydon LLP
Clayton Utz
Cornerstone Research
Drinker Biddle & Reath LLP
Eversheds Sutherland
Faus & Moliner Abogados
Hamdan AlShamsi Lawyers & Legal Consultants
Herbert Smith Freehills LLP
Iwata Godo Law Offices
Kellerhals Carrard
Lee and Li, Attorneys-at-Law
Legaltree
Matheson
Noerr LLP
Pinheiro Neto Advogados
Sidley Austin LLP
Squire Patton Boggs
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Wolf Theiss

glg
global legal group

global legal group

Contributing Editors
Adela Williams & Tom Fox, Arnold & Porter

Publisher
Rory Smith

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Senior Editors
Caroline Collingwood
Rachel Williams

Group Consulting Editor
Alan Falach

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK

Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
May 2019

ISBN 978-1-912509-73-7
ISSN 1740-1887

Strategic Partners

General Chapters:

Country Question and Answer Chapters:

Greece

Bahas, Gramatidis & Partners

Dimitris Emvalomenos

1 Liability Systems

1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?

Law 2251/1994 on "Consumers' Protection" ("Consumers' Law"), which implemented EU Directive 85/374/EEC "on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products" (as amended by EU Directive 99/34/EC), sets the main product liability rules in Greece (articles 6 and 7). Moreover, Ministerial Decision Z3/2810/14.12.2004 ("MD") implemented EU Directive 2001/95/EC on "General Product Safety". Although the Consumers' Law has been amended several times, extensive amendments were introduced in 2007 and 2018 (by Laws 3587/2007 and 4512/2018, respectively).

The Consumers' Law establishes a strict liability regime, i.e. not fault-based. Article 6 para. 1 of the Consumers' Law provides that "the producer shall be liable for any damage caused by a defect in his product". It follows that, in order for a producer to be held liable, the pre-requisites are: a) a product placed on the market by the producer is defective; b) damage occurred; and c) a causal link between the defect and the damage exists (established under the prevailing theory of "*causa adequata*"). However, this strict liability system does not preclude other liability systems providing a consumer with greater protection on a specific case (article 14, para. 5 of Consumers' Law). Such additional systems are:

- Contractual liability (articles 513-573 of the Greek Civil Code ("GCC") on contracts of sale of goods also incorporating Directive 1999/44/EC): this liability system requires a contractual relationship between the parties where the buyer must not necessarily be a consumer. The seller is strictly (irrespective of his fault) liable for the sold product's defects or non-conformity with agreed qualities at the time the risk passes to the buyer, the knowledge of the latter releasing the seller from liability under conditions, together with other reasons for such a release provided by law.
- Tortious liability (esp. articles 914, 925 and 932, together with articles 281 and 288 of GCC): although the claimant must establish the defendant's fault in tort claims, case law reverses the burden of such proof in favour of the claimant-consumer, based on the "theory of spheres", thus obliging the defendant to prove absence of fault to be released from liability.
- Criminal liability: derived from the Greek Criminal Code and Law 4177/2013 (Rules Regulating the Market of Products and the Provision of Services) (article 13a, para. 2 of Consumers' Law).

1.2 Does the state operate any schemes of compensation for particular products?

No, it does not; but see also below under question 1.4.

1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the "retail" supplier or all of these?

Article 6, paras. 2–4 of Consumers' Law provides that the "producer", who bears responsibility for the defect, is the manufacturer of a finished product or of any raw material or of any component, and any other person who presents himself as a producer by putting his name, trade mark or other distinguishing feature on the product. Moreover, any person who imports (within the EU) a product for sale, leasing or hire, or any form of distribution shall be responsible as a producer. Where the producer of the product may not be identified, each supplier of the product, shall be treated as its producer, unless he provides the injured person with information on the identity of the producer or of the person who supplied him with the product. The same applies to the supplier of imported products when the importer's identity is unknown, even if the producer's identity is known.

1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?

The potential liability of a regulatory authority falls within the legal frame of the state's and state entities' liability (articles 104-106 of GCC's Introductory Law), requiring an unlawful act or omission at the exercise of their duties and being regulated by the general provisions of the GCC regarding legal entities; an exception applies where a general public interest supersedes. A joint liability of the state/state entity and the particular person acted in breach of the law is established.

1.5 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

According to article 7 of the Consumers' Law and article 3 of the MD, producers are obliged only to place safe products on the

market. Accordingly, producers must provide consumers with the relevant information to enable them to assess the product's risks throughout the normal or reasonably foreseeable period of the product's use. Producers must also take any action needed in order to avoid these risks, as well as take any appropriate preventive and corrective action (such as a recall of the product), depending on the specific circumstances. Based on the above, a claim for failure to recall may be brought on the grounds of the producer's negligence to act accordingly.

1.6 Do criminal sanctions apply to the supply of defective products?

Yes (see above under question 1.1).

2 Causation

2.1 Who has the burden of proving fault/defect and damage?

The plaintiff-consumer has to prove the defect, the damage and their causal link, whereas proof of fault is not needed. Where a plaintiff sues in tort, as a rule he must prove the defendant's fault. However, case law and theory hold that the burden of proof may be reversed if the plaintiff would otherwise be unable to prove the defendant's culpable conduct. This is held when the fact to be proven lies in the exclusive sphere of the defendant's influence, and the plaintiff is unable to gain access in order to meet his burden of proof obligations; in such a case, the defendant is required to prove that he was not responsible for the occurrence of the injurious fact. The reversal is applied under the case law primarily for consumers' claims (see above under question 1.1).

It is noted that before the 2018 revision of the Consumers' Law (see below under question 8.1), the definition of "consumer" was extremely broad, including any natural or legal person or entity without legal personality that was the end recipient and user of products or services, as well as any guarantor in favour of a "consumer" (but not for a business activity) (previous article 1, para. 4a of the Consumers' Law); moreover, such definition had been further expanded by case law to cover persons that used the products or services not only for private use but also for business use. As of 18.3.2018, this extended definition was narrowed and "consumer" is considered any natural person acting for purposes not falling within a commercial, business, handcraft or freelance activity (new article 1a, para. 1 of the Consumers' Law).

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

It is not enough for the claimant to generally allege that the defendant wrongly exposed the claimant to an increased risk of injury. A direct connection between the injury caused and the specific defect has to be established by the claimant. As per current case law, it is necessary to be proven that the product to which the claimant was exposed has actually malfunctioned and caused the claimant's injury.

2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

By law, where more than one person is responsible for the same damage, their liability towards the person injured is joint and several, whereas they have a recourse right against each other based on their contribution to the damage, as a matter of proof (article 6, para. 10 of the Consumers' Law and 926 of GCC).

2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of "learned intermediary" under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

The producer has to provide adequate warnings for the risk evaluation of the specific product, and failure to do this may result in his liability, not only civil, but also administrative and criminal (article 7 of Consumers' Law and MD). The learned intermediary doctrine, although not provided for by law, may work on a particular case taking into account all the circumstances of it, as a defence to manufacturers of medicines and medical devices towards discharge from their duty of care to patients by having provided warnings to prescribing physicians. However, in the case where the use of the product, even according to the producer's guidance, bears a danger for the consumer, this fact needs to be clearly brought to the consumer's attention by the producer. Failure to warn is seen to have caused the damage only when it is fully proven that the use of the product according to the producer's guidelines would have prevented the damage. Also, any intermediaries (e.g. doctors) have their own and separate obligations to consumers under the service liability rules (article 8 of Consumers' Law). In any event, a producer's liability is not reduced where third parties are co-liable (article 6, para. 11 of the Consumers' Law).

3 Defences and Estoppel

3.1 What defences, if any, are available?

The producer may be relieved from liability if he proves that: a) he did not place the product on the market; b) when he manufactured the product, he had no intention whatsoever of putting it into circulation; c) at the time the product was placed on the market the defect did not exist; d) the defect was caused by the fact that the product was manufactured in a way from which a derogation was

not permitted (subject to mandatory regulation); or e) when the product was placed on the market, the applicable scientific and technological rules at that time prevented the defect from being discovered (the so-called *state-of-the-art* defence).

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

There is a state-of-the-art defence, as noted above under question 3.1 (point e), and it is for the manufacturer to prove that the fault/defect was not discoverable.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

Yes, as noted above under question 3.1 (point d). In particular, two opinions were expressed on this, namely: a) the manufacture of a product according to the applicable scientific and regulatory safety requirements is one of the factors determining its expected safety level. The producer's observance with the set safety requirements does not necessarily mean that the product is not defective, but it simply indicates a lack of defect, which must be proven by the producer (this is followed by the current jurisprudence); and b) the producer's conformity with the applicable safety specifications leads to the assumption that the product lacks defectiveness and the damaged consumer must argue against it.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

Greek courts' final decisions which may not be challenged through appellate proceedings: a) are irrevocable; and b) have a *res judicata* effect, but only among the litigants, only for the right that was tried, and provided that the same historical and legal cause applies. In that respect, re-litigation by other claimants is possible.

The above rule is differentiated where a court's decision is issued following a collective lawsuit. As per the Consumers' Law (article 10, paras. 16 *ff.*), in such cases, the decision issued has an *erga omnes* effect, namely towards non-litigants as well, this being a very special characteristic under Greek law. The same decision has a *res judicata* effect in favour of any consumer damaged, even if they did not participate in the relevant trial, when it recognises the damage suffered by the consumers due to an unlawful behaviour. As a result, any damaged consumer may notify his claim to the producer. In a case where the producer does not compensate the consumer at issue within thirty (30) days, the latter may file a petition before the competent court asking for a judicial order to be issued against the producer. Further, individual consumers' rights are not affected by the collective pursuance of a claim, nor by a rejecting decision in the above case.

3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings, is there a time limit on commencing such proceedings?

The producer's liability cannot be limited due to the fact that a third party is also liable (see above under question 2.4), but the producer has a right of recourse in such a case which may be pursued as long as it does not become time-barred.

3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?

A producer's liability can be limited or abolished in cases where the damaged consumer's contributory negligence may be proven.

4 Procedure

4.1 In the case of court proceedings, is the trial by a judge or a jury?

Private law disputes, including product liability claims, are tried exclusively by civil courts and only by a judge, depending on the amount of the dispute. As a rule, justices of the peace are competent to examine claims of up to €20,000; one-member first instance courts, claims between €20,000 and €250,000; and three-member first instance courts, claims exceeding €250,000 (articles 14 and 18 of the Greek Code of Civil Procedure – "GCCP").

4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

Yes, if the court finds that the issues to be proven require special scientific qualifications, it may appoint one or more experts (articles 368–392 of GCCP; see also below under question 4.8).

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?

Class action procedures for multiple claims brought by a number of plaintiffs do not exist in Greece, but there are provisions regarding collective actions as analysed herein (e.g. see under questions 3.4 and 4.4).

4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?

A number of claimants may bring claims by means of a collective lawsuit. The collective lawsuit is distinguished from a common one, where more claimants connected to each other with a specific object of the trial are represented before the court by one or more of

their co-claimants. The collective lawsuit may only be filed by consumers' associations, under the pre-requisites specified in the Consumers' Law (article 10, paras. 16 *ff.*).

4.5 May lawyers or representative bodies advertise for claims and, if so, does this occur frequently? Does advertising materially affect the number or type of claims brought in your jurisdiction?

Lawyers may not advertise for claims in any case. Representative bodies may do so, provided their public announcements are true, accurate and not misleading, otherwise administrative sanctions may be imposed on them and may result in their deletion from the registrar of the consumers associations (article 10, paras. 26-28 of the Consumers' Law); however, such advertising occurs rather rarely, and it does not materially affect relevant claims brought.

4.6 How long does it normally take to get to trial?

Under the legal regime, up to 31 December 2015, and as an average, an action under ordinary proceedings was fixed for hearing approximately between 18 and 24 months following its filing, and the decision was issued six to eight (6–8) months after the hearing, provided that the initial hearing was not adjourned (one adjournment being rather a practice). The above average times very much depend on the type of the court (see under question 4.1), as well as the place where it is located. To speed up proceedings, a new law was introduced in 2015 (Law 4335), and has been in force since 1 January 2016. Under the new regime, the hearing is purported to take place around six to seven (6–7) months after the filing of a lawsuit (articles 215 and 237 of GCCP) but that time frame is in practice prolonged.

4.7 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

No, there are no separate proceedings especially for preliminary issues, such as on the court's jurisdiction or competence, and these are dealt with at the time of the main trial, this being either the ordinary or injunction proceedings. However, where the court considers it important to be informed on foreign law or on specific scientific-technical matters, it may issue an interim order thereon.

4.8 What appeal options are available?

Every definite judgment issued by a first instance court may be contested before the Appellate Court. An appeal can be filed not only by the defeated party, but also by the successful party whose allegations were partially accepted by the court. Further, a cassation before the Supreme Court may be filed against Appellate Court decisions.

4.9 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

As stated above under question 4.2, the court may appoint experts to assist it in considering technical issues. The expert(s) may take knowledge from the information in the case file and/or request clarifications from the parties or third parties. The parties are also entitled to appoint one technical advisor each, who reads the expert report, submits his opinion and raises relevant questions to the court expert. The opinion of the court-appointed expert is not binding on the court. Additionally, the parties may submit to the court an unlimited number of expert/technical reports supporting their allegations. In practice, the reports of party-appointed experts are of lesser evidentiary value than those of the court-appointed ones.

4.10 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Factual or expert witnesses appointed by the parties may, instead of giving oral evidence before the court, give sworn depositions before a judge of a piece, a notary public or, if outside Greece, before a Greek consular authority. The opponent must be summoned to such depositions before two working days and he is entitled to obtain a copy prior to trial. Non-compliance to the procedural requirements renders the depositions inadmissible. There are restrictions to the number of sworn depositions (articles 421–424 of GCCP).

Court-appointed experts have to submit their reports at the time ordered by the court, adjourning the hearing for that purpose.

4.11 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

There are no pre-trial discovery proceedings. Each litigant has to disclose all documents supporting his case (except from a serious reason) by his submissions filed at the specified time, depending on the court and kind of proceedings. The general principles of good faith, *bonos mores* and honest conduct apply (esp. articles 116 and 450 of GCCP). A litigant may request from the court to order disclosure of documents in the possession of his opponent or a third party under conditions (articles 450 *ff.* of GCCP and 901–903 of GCC).

4.12 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

Parties may choose (but are not obliged to opt for, as a rule) mediation or arbitration as the means for resolving their disputes, even for actions pending before the court. Also, before initiating actions, they may voluntarily address the competent justice of the peace, asking for the latter's intervention in order for the dispute to be settled at an early stage (with very limited applicability) or recourse to judicial intervention (see more below under question 6.6). By Law 4512/2018, mandatory mediation was introduced for certain disputes, although not including product liability/safety claims (see below under question 8.1).

Further, the 2013 EU legislation on alternative dispute resolution ("ADR") applies to Greece; specifically, Ministerial Decision No. 70330/30.6.2015 implemented the ADR Directive 2013/11/EU and set supplementary rules for the application of the ODR Regulation 524/2014. Registered ADR entities per the above Ministerial Decision are: a) the Consumer Ombudsman ("CO"), being the key ADR authority for consumers; b) the (sectoral) Ombudsman for Banking and Investment Services (also part of the FIN-NET for credit/financial trans-boundary disputes); and c) "ADR point", a private organisation.

Also, the following bodies/authorities exist for ADR, namely: i) the Committees for Friendly Settlement, initially managed by the local Prefectures, then supervised and overseen by the CO, and as from 1.1.2011 managed by the local municipalities; ii) the Hellenic European Centre of Consumer, supported by the CO and regarding trans-boundary EU ADR; iii) the SOLVIT network regarding the improper application of Internal Market rules by the EU public administrations at a cross-border level supervised by the Ministry of Finance; and iv) the Citizen's Ombudsman, which deals with disputes between citizens (in general) and public authorities.

4.13 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?

As a rule, any person, either Greek or non-Greek, is subject to a Greek court's jurisdiction, thus he may sue or be sued, provided a Greek court is locally competent to try the case (article 3 of GCCP). Such competence is determined by a rather detailed categorisation; among the various legal bases and regarding a tortious act, the one regarding the place where the event that caused the damage either took place or is to occur establishes competence, thus jurisdiction, of a Greek court (articles 22 *ff.* and especially article 35 of GCCP). At EU level, one may also mention Regulation 44/2001 ("Brussels I"), as in force, as also being applicable to Greece.

5 Time Limits

5.1 Are there any time limits on bringing or issuing proceedings?

Yes (see under question 5.2).

5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the Court have a discretion to disapply time limits?

For strict liability and according to article 6, para. 13 of the Consumers' Law, a three (3)-year limitation period applies to proceedings for the recovery of damages, while the right to initiate proceedings against the producer is extinguished upon the expiry of a ten (10)-year period from the date the producer put the product into circulation. The age or condition of the claimant does not affect the calculation of the time limits, while the court may not disapply time limits.

In case of a collective lawsuit, it must be brought within six (6) months from the last unlawful behaviour challenged, unless the mere recognition by the court that an unlawful act had taken place is sought, where the general five (5)-year prescription period for torts applies (article 10, para. 18 of the Consumers' Law).

For a claim in tort, a general five (5)-year prescription period applies, whereas the claim is in any case extinguished twenty (20) years from the date of the tortious act (article 937 of GCC).

Contractual liability claims under a contract of sale of goods are time barred after two (2) years for movables and five (5) years for immovable property, whereas further detailed regulation applies (articles 554–558 of GCC).

5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

The Consumers' Law does not contain specific provisions. Article 6, para. 13 sets as the starting point from which the time limitation runs the day on which the plaintiff became aware or should have become aware of the damage, the defect and the identity of the producer. Regarding the knowledge of the damage, it is not required for the plaintiff to be informed of the individual damage, but the knowledge of the possibility of a forthcoming loss-making result is enough. The knowledge of the defect includes the circumstances from which it results that the use of the product does not meet the consumer's safety expectations. Furthermore, the consumer needs to be in a position to know that the damage is the result of the specific defect of the product.

Under the contract of sale of goods provisions, the seller's concealment or fraud deprive him from invoking prescription (article 557 of GCC).

6 Remedies

6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?

Monetary compensation under civil proceedings is available to the victim (see below under question 6.2). Criminal or administrative proceedings possibly pursued as well do not aim at compensating the victim. Especially under a collective claim, consumers' associations may ask: a) that a producer abstains from an unlawful behaviour even before it occurs; b) for the recall, seizure (as injunctive measures), or even destruction of the defective products; c) for moral damages; and d) that the court recognises consumers' right to restore the damage caused to them by the producer's unlawful behaviour (article 10, para. 16 of the Consumers' Law).

6.2 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?

According to article 6, paras. 6 and 7 of the Consumers' Law, the types of damage that are recoverable are: a) damages caused by death or by personal injury to anyone; and b) damage or destruction caused by the defective product to any consumer's asset other than the defective product itself, including the right to use environmental goods, provided that i) the damage exceeds €500, and ii) the product was ordinarily intended for and actually used by the injured person for his own private use or consumption. Compensation for moral harm or mental distress (to the family of the deceased) may also be claimed.

Under a claim in tort, full damages may be recoverable (article 914 *ff.* of GCC).

Lastly, under contractual liability (sale of goods), the buyer may request (especially articles 540–543 of GCC): a) the repair or replacement of the defective product; b) a reduction of the consideration; c) rescission of the contract; and/or d) compensation, under conditions.

6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

A causal link is always required between the defect and the damage in order for the producer to be held liable. So, in cases where the product has not yet malfunctioned and caused injury, there is an absence of this condition. If the product malfunctions in the future, medical monitoring costs may be recovered provided actual damage suffered by the consumer is proven.

6.4 Are punitive damages recoverable? If so, are there any restrictions?

No. However, in collective claims, the way the amount for moral damages awarded is calculated and the effect of the relevant decision (see above under questions 3.4 and 6.1) brings it closer to a pecuniary sentence, a so-called "civil sanction" imposed on the producer (article 10, paras 16.b and 20 of the Consumers' Law). It is noted that by the latest revision (see below under question 8.1), the obligation to allocate 20% of the moral damages awarded to the General Consumers' Secretariat so that same are invested for the promotion of policies regarding consumers' protection, was abolished (article 10, para 22 of the Consumers' Law).

6.5 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?

No, there is not.

6.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

Yes, although they are rarely applied by the interested parties. An option is a party's referral to a justice of the peace prior to the filing of a lawsuit for the latter's intervention in order to try and obtain a settlement (articles 209–214 of GCCP). Another option is a settlement between litigants until the issuance of a final decision and provided the substantive law requirements (see below) for the same are met; such settlement may or may not be certified by the court, as per the litigants' choice (article 214A of GCCP). Another alternative introduced in 2012 and titled "judicial intervention" is actually an extension of the old justice of the peace intervention and it provides for a permanent mechanism set up in each court of the first instance, where nominated judges may assist the litigants to reach a settlement, if the parties choose so (article 214B of GCCP). Additionally, the court may propose to litigants recourse to judicial intervention and, if accepted by them, the hearing of the case is adjourned for three months (article 214C of GCCP in force as from 1.1.2016).

On substance, the out-of-court settlement is characterised as a typical civil contract where the parties need: a) to conform to *bonos mores* or public policy/order in general; b) to be capable of entering into contracts; and c) to be legitimately represented (in cases of companies by their legal representatives, and in case of minors by their parents or the person who has the power to represent them). Special permission needs to be granted by the court in cases where a minor waives any claims by settling them.

6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the Claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the Claimant in respect of the injury allegedly caused by the product. If so, who has responsibility for the repayment of such sums?

Yes, they can initiate proceedings against the claimant for recovery, but only in a case where the claimant received the amount of damages awarded or settlement paid by committing fraud against the State.

7 Costs / Funding

7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?

The loser-pays rule applies. Court expenses are "only the court and out-of-court expenses that were necessary for the trial" and in particular are: a) stamp duties; b) judicial revenue stamp duty; c) counsels' minimum fees set by the Greek Lawyers' Code; d) witnesses' and experts' expenses; and e) the successful party's travelling expenses in order for him to attend the hearing. However, the expenses that the successful party recovers are, as per the general practice, substantially lower than his actual expenses, whereas the court very often sets off the expenses between the litigants on the basis of complex legal issues involved in the litigation (article 173 *ff.* of GCCP).

7.2 Is public funding, e.g. legal aid, available?

Yes. The Law 3226/2004 on the provision of legal aid to low-income citizens (implementing Directive 2003/8/EC) sets the relevant requirements, together with articles 194 *ff.* of GCCP.

7.3 If so, are there any restrictions on the availability of public funding?

As per Law 3226/2004, beneficiaries of legal aid are low-income citizens of the European Union, as well as of a third state, provided that they reside legally within the European Union. Low-income citizens are those with an annual familial income not exceeding two thirds (2/3) of the minimum annual income provided by the National General Collective Labour Agreement. Furthermore, legal aid may be granted under the condition that the case, subject to the discretion of the court, is not characterised as apparently unjust.

Further and as per the GCCP, legal aid in civil and commercial matters purports to an exemption from the payment of part or all of the court's expenses, and following the submission of a relevant petition by the beneficiary and the nomination of a lawyer, notary and judicial bailiff, in order to represent him before the court. The exemption includes primarily stamp duty payment and judicial revenue stamp duty. Also, the beneficiary is exempt from paying the remuneration of witnesses and experts and the lawyer's, notary's and judicial bailiff's fees.

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Yes. Contingency fees and other conditional arrangements are allowed between clients and lawyers as per the Lawyers' Code under the basic restrictions that they are made in writing, and that the maximum fee percentage agreed may not exceed 20% of the subject matter of the case at issue (or 30% if more than one lawyers are involved). Further detailed regulation is provided by the Lawyers' Code (article 60 of Law 4194/2013).

7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

No, it is not.

7.6 In advance of the case proceeding to trial, does the Court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

No, it does not.

8 Updates

8.1 Please provide a summary of any new cases, trends and developments in Product Liability Law in your jurisdiction including how the courts are approaching any issues arising in relation to new technologies and artificial intelligence.

a) The Consumers' Law has been amended several times. The first set of important changes introduced in 2007 on the product liability rules were: a) the expansion of the defectiveness concept to not only include the standard *safety* consideration, but to also take into account the product's "expected performance per its specifications"; b) the subjection of the moral harm and mental distress compensation to the ambit of the strict product liability rules (formerly covered under the general tort legislation); and c) new rules on collective actions to the extent they concern product liability infringements.

In 2012, the right to bring collective actions under the Consumers' Law was extended to other EU Member State entities authorised for this, as per the respective list provided for by Directive 2009/22/EC (article 10, para. 30 of Consumers' Law).

In 2013 and 2015, changes were introduced, among others, to the financing of consumers' organisations, the sanctions that may be imposed for non-compliance with its provisions, and the categorisation of complaints filed under it (articles 10, 13a and article 13b of Consumers' Law).

Lastly, in 2018 the Consumers' Law was again extensively revised and also codified into a new text (in force as of 18.3.2018). Regarding product liability rules, a) material change was made to the definition of "consumer" that was narrowed; other basic changes regard b) the regulatory authorities and their enforcement duties, c) the funding of consumers' associations, and d) the administrative proceedings and sanctions imposed (articles 1a.1, 7, 10, 13a and 13b of Consumers' Law).

Overall, there is a continuing trend towards increased consumers' rights and sanctions for relevant breaches.

b) Also, a trend towards ADR for the avoidance of litigation may be seen in various amendments to the Civil Procedural Rules of 2011–2015 (see above under question 6.6).

This trend is broader in Greek law (see above under question 4.11) and within the same frame one may also note a) Law 3898/2010 which implemented Directive 2008/52/EC "on certain aspects of mediation in civil and commercial matters", and b) Law 4512/2018 which introduced extensive provisions on mediation in civil and commercial matters, including a list of disputes with mediation being mandatory before they are litigated (e.g. for car accidents, among owners of flats, for professionals' fees); however, the constitutionality of such compulsory mediation was questioned (Opinion No 34/2018 of the Supreme Court's Administrative Plenary Session) and for the time being the effect of the relevant provisions has been suspended until 16.9.2019 (article 19 of Law 4566/2018).

Thus far, application of ADR remains limited.

c) Dealing by the Greek courts of issues related to new technologies and artificial intelligence remains primitive.

Dimitris Emvalomenos
Bahas, Gramatidis & Partners
26 Filellinon Street
105 58 Athens
Greece

Tel: *+30 210 3318 170*
Fax: *+30 210 3318 171*
Email: *d.emvalomenos@bahagram.com*
URL: *www.bahagram.com*

Qualified: Athens, 1987.

Degrees: LL.M., University of London, Queen Mary College, 1988; and LL.B., University of Athens Law School, 1987.

Areas of practice: Corporate, Commercial, Product Liability, Consumer Law, Competition, Network Contracts, M&As.

Career to date: 2002, Partner, Bahas, Gramatidis & Partners, Athens, Greece. 1990, Partner, Bahas, Gramatidis & Associates, Athens, Greece. 1989, Lawyer, Zepos & Zepos Law Firm, Athens, Greece. 1987, Lawyer, Morland Navigation Company, London, UK.

Professional associations/memberships: Piraeus Bar. Greek Commercial Lawyers' Association, Athens. Competition Law Partnership, Athens. Greek Association for Arbitration, Athens. Greek Association of Law and Economics, Athens. Greek Association for Financial Law, Athens. IBA (SBL Committees C, L, M, S). European Justice Forum (EJF), Brussels (www.europeanjusticeforum.org): correspondent for Greece. DRI Europe (www.drieurope.org) (P/L, Competition, Business Transactions): Country Chair – Greece. IADC (www.iadclaw.org).

Publications: Dimitris Emvalomenos is the author of numerous articles – please see his biography on the Bahas, Gramatidis & Partners website.

Languages: Greek and English.

Additional information: Married, with three children.

Bahas, Gramatidis & Partners traces its origins to the Law Office Marios Bahas in 1970. In 1988, the original firm merged with Law Office Yanos Gramatidis to form Bahas, Gramatidis & Associates with the participation of Dimitris Emvalomenos in 1990. Finally, in 2002, Bahas, Gramatidis & Associates merged with Law Offices of Athanassios Felonis & Associates and Spyros Alexandris & Associates, to form Bahas, Gramatidis & Partners. At the core of the Firm's practice is the representation of corporations, financial institutions, investment banks, non-profit entities and individuals in complex financial and corporate transactions and litigation. Headquartered in the city of Athens, the Firm has associated offices in 35 countries. Bahas, Gramatidis & Partners' corporate team advises companies and businesses on a daily basis on all aspects of carrying on business in Greece, from commercial regulatory matters to regulatory compliance. The Firm has developed a unique expertise in product liability/safety recognised worldwide. The Firm is a part of an established network of contacts promoting, among other topics, product liability and related issues such as the European Justice Forum, the University of Oxford and DRI Europe. The Firm represents a good number of multinational companies, being leaders in their own business areas in complex advisory work and litigation.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com